

A GUIDE TO LEGISLATING ON SEXUAL VIOLENCE: A CONSENT-BASED APPROACH

2025



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About Equality Now

Equality Now is an international human rights organization founded in 1992 to protect and promote the rights of all women and girls around the world. Its campaigns are centered on four program areas: achieving legal equality, ending sexual violence, ending harmful practices, and ending sexual exploitation, with a cross-cutting focus on the unique needs of adolescent girls and other vulnerable groups.

Equality Now connects grassroots activism with international, regional, and national accountability mechanisms to achieve legal and systemic change for greater equality and benefit for all. It works to encourage governments to enact and implement laws and policies that support the rights of women and girls in line with international human rights standards. Equality Now's advocacy work has contributed to the modification or partial or total repeal of laws to help protect against all forms of gender-based violence, including rape, sex trafficking, and harmful practices such as child, early, and forced marriages and unions, as well as female genital mutilation (FGM). Equality Now is a global organization with partners around the world and a team of more than 80 people based in various locations, including Beirut, Johannesburg, London, Bogota, Geneva, San Jose, New York, Nairobi, and Tbilisi, among others.

About ParlAmericas

ParlAmericas is the institution that promotes parliamentary diplomacy in the inter-American system. Composed of the 35 national legislatures of North, Central, and South America and the Caribbean, it promotes cooperative political dialogue, facilitates the exchange of good legislative practices, and develops resources to support the work of parliamentarians.

ParlAmericas works towards democratic strengthening and the promotion and protection of human rights, addressing hemispheric priorities. It promotes gender equality in the parliamentary sphere, advocating for the application of a gender perspective and an intersectional approach in parliamentary work.

Led by and for parliamentarians, ParlAmericas is governed by a Board of Directors of parliamentarians who serve as executive members and sub-regional representatives and are appointed by member parliaments. The International Secretariat of ParlAmericas is based in Ottawa, Canada.

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1. FOREWORD

Over the last four decades, sexual violence has been recognized as one of the most severe manifestations of gender-based violence — a product of historical inequalities in power based on discriminatory gender stereotypes to the detriment of women in all their diversity.¹ Grounded in a patriarchal system,² the cultural, economic, social, and political construct of gender roles perpetuates multiple forms of discrimination against survivors of sexual violence, especially those who belong to historically marginalized population groups, such as women with disabilities, the LGBTQI+ population, migrants, refugees and Afro-descendant and Indigenous women.

The [Committee on the Elimination of Discrimination against Women](#) (CEDAW Committee) affirms:

...gender-based violence against women as being rooted in gender-related factors, such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage, or punish what is considered to be unacceptable female behaviour. Those factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered a private matter, and to the widespread impunity in that regard (para.19).³

Rather than protecting victims/survivors and safeguarding their rights, there is currently a social normalization of various forms of sexual violence—stemming from harmful myths and stereotypes—and individuals are often blamed and shamed for their suffering. Moreover, perpetrators often file defamation lawsuits to justify their crimes, penalize victims, and dissuade them from filing complaints, thus securing their impunity. It is critical to pass laws that ensure women's access to justice and to repeal those that discriminate against, criminalize, and/or deter victims from reporting sexual violence.⁴

Parliamentarians whose States are parties to CEDAW are responsible for **conventionality control**—that is, integrating the standards and jurisprudence of international law into national legal systems.⁵ Conventionality control seeks to guarantee access to justice for victims/survivors of sexual violence and to repeal discriminatory laws that criminalize them and/or dissuade them from reporting.⁶ Laying the legal foundations as a **starting point for cultural transformation** requires this kind of harmonization.

This document seeks to support legislative work of this kind by presenting the **international human rights law standards on crimes of sexual violence** in a clear and technical manner that can aid in responding to legal gaps and/or updating national laws in accordance with the highest human rights standards. The sections that follow will provide guidance on applying international standards and jurisprudence to legislate on **sexual violence from a consent-based approach**.

1 For the purposes of this document, the term “woman/women” refers to women in all their diversity, including women of all ethnic and racial backgrounds, social, economic and migratory statuses, ages, disabilities, gender identities, sexual orientations, etc.

2 According to the United Nations gender [glossary](#), [patriarchy](#) refers to a form of social organization rooted in gender inequality. It is worth mentioning that this type of social system sustains the construct of hegemonic masculinities that exert domination and control over women through subordination, oppression, exploitation, exclusion, and marginalization, which exacerbate various forms of gender-based discrimination and violence.

3 [Committee on the Elimination of Discrimination against Women, CEDAW](#), General Recommendation N. 35, CEDAW/C/GC/35, July 26, 2017, available at https://digitallibrary.un.org/record/1305057/files/CEDAW_C_GC_35-EN.pdf?ln=en

4 Equality Now Issues an Amicus Brief Against Using Defamation to Silence Survivors of Gender-based Violence and Discrimination in Georgia, June 24, 2021, available at https://equalitynow.org/news_and_insights/equality_now_issues_amicus_brief_against_using_defamation_to_silence_survivors/

5 Conventionality control is the legal tool that allows States to fulfill their obligation to guarantee human rights in the internal/domestic context by verifying that national laws and practices align with the standards of the inter-American system, the universal human rights system and standards of international criminal law.

6 Equality Now, Issues an Amicus Brief Against Using Defamation to Silence Survivors of Gender-based Violence and Discrimination in Georgia, June 24, 2021 available at https://equalitynow.org/news_and_insights/equality_now_issues_amicus_brief_against_using_defamation_to_silence_survivors/

2. WHY IS IT NECESSARY TO UPDATE THE LAWS ON SEXUAL VIOLENCE?

Scope of the problem

[WHO estimates](#) (2021) comparing global and regional levels of sexual violence show that the prevalence of sexual violence (both between intimate partners and between individuals who are not partners) is higher in North America, Latin America, and the Caribbean than the global rate.⁷ UNICEF estimates that, globally, about 15 million adolescent girls between the ages of 15 and 19 have experienced “forced sex.”⁸ Despite the overall lack of reliable data on the prevalence of sexual violence against girls and adolescents in Latin America and the Caribbean, national surveys indicate that girls and adolescents experience high rates of sexual violence and that this is often perpetrated by individuals they know, including trusted caregivers.⁹ Given that statistics on rape are difficult to capture accurately, the true figure is believed to be much higher. The Caribbean has some of the highest reported rates of sexual violence in the world, and survivors living on islands such as Barbados and Bermuda face significant challenges and social barriers to accessing justice. For these victims, it is not easy to escape their perpetrators or to face the consequences of reporting in small and closely connected communities.¹⁰

Sexual violence against Black, Afro-descendant, Afro-Caribbean, and Indigenous women continues to be shaped by stereotypes associated with race and ethnicity; relationships or contexts characterized by exploitation and/or domestic servitude; racist representations that enable sexual exploitation through fetishization stemming from hierarchical relations; and unregulated labor

relations or unpaid care work. According to the General Recommendation of the Committee of Experts of the MESECVI (No. 5),¹¹ “Afro-descendant girls and adolescents are often the main victims of sexual and physical violence and are also at greater risk of being trafficked for sexual exploitation or forced labor, including exploitation by networks linked to sex tourism.”¹² This document also notes that “...obstacles in terms of access to justice disproportionately affect afro-descendant women. This population faces difficulties with accessing administrative and judicial complaint and reparations mechanisms,¹³ which is a situation reflected in their overrepresentation in the criminal justice systems¹⁴.” Furthermore, statistics show that “...Indigenous women are more likely to experience rape than non-Indigenous women. It is estimated that one in three Indigenous women is raped during her lifetime.”¹⁵ It is therefore necessary for public officials to apply an [intersectional](#) approach in their work.¹⁶ This lens should consider ethnic-racial dimensions and begin from an understanding of structural racism and the differences between ethnic groups, their worldviews, their relationships with the land, territory, and the environment, and their religious and originary beliefs, as well as their ways of life and livelihoods, with a goal of eradicating all forms of discrimination and revictimization in the social, political, economic, and legal spheres.¹⁷

It is necessary for public officials to implement the intersectional approach.

7 [UN Women](#), Violence against women prevalence estimates, 2018: Global, regional and national prevalence estimates for intimate partner violence against women and global and regional prevalence estimates for non-partner sexual violence against women, Geneva, 2021, available at <https://www.who.int/publications/item/9789240022256>

8 United Nations Children's Fund (UNICEF), A familiar face: Violence in the lives of children and adolescents, UNICEF, (2017), p. 73. https://data.unicef.org/wp-content/uploads/2017/10/EVAC-Booklet-FINAL-10_31_17-high-res.pdf

9 The countries included by WHO in the Region of the Americas in its estimates of the prevalence of intimate partner violence are: Argentina, Belize, Bolivia (Plurinational State of), Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, Suriname, and Venezuela. The countries included in the estimates of sexual violence between non-partners are: Argentina, Belize, Bolivia (Plurinational State of), Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Paraguay, Peru, and Suriname.

10 Equality Now, Failure to protect: How discriminatory sexual violence laws and practices are hurting women, girls, and adolescents in the Americas, 2021, available at <https://equalitynow.org/resource/failure-to-protect-how-discriminatory-sexual-violence-laws-and-practices-are-hurting-women-girls-and-adolescents-in-the-americas/>.

11 OAS/MESECVI, General Recommendation No. 5: Gender-based violence against Afro-descendant women : [Approved at the XX Meeting of the Committee of Experts of the MESECVI, held November 28-29, 2023 in Washington, D.C.]. / [prepared by the Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) / Inter-American Commission of Women]. p. 10. (OAS. Official documents; OEA/Ser.L/II.6.50) <https://belemdopara.org/wp-content/uploads/2024/06/MESECVI-General-Recommendation-No.-5.pdf>

12 See for example: UN. Statement by UN Special Rapporteur on child sexual exploitation, Maud de Boer-Buquichio, on her visit to the Dominican Republic (May 8-15, 2017). May 18, 2017, cited in OAS/MESECVI General Recommendation No. 5

13 IACHR, Rapporteurship on the Rights of Afro-descendants and against Racial Discrimination, The Situation of Afro-descendants in the Americas, 2011, cited in OAS/MESECVI General Recommendation No. 5 https://www.oas.org/en/iachr/afro-descendants/docs/pdf/AFROS_2011_ENG.pdf

14 Inter-American Commission on Human Rights, Economic, social, cultural, and environmental rights of Persons of African Descent : Inter-American standards to prevent, combat and eradicate structural racial discrimination, 2021, cited in OAS/MESECVI General Recommendation No. 5 <https://www.oas.org/en/iachr/reports/pdfs/DESCA-Afro-en.pdf>

15 CEDAW/C/GC/39: General recommendation No. 39 (2022) on the rights of Indigenous women and girls, paragraph 35, available at https://digitallibrary.un.org/record/3997099/files/CEDAW_C_GC_39-EN.pdf?ln=en

16 See the document on intersectionality prepared by ParlAmericas at: http://parlAmericas.org/uploads/documents/Intersectionality_en.pdf

17 See General Recommendation No. 5 of the MESECVI and the best practices on violence and discrimination against women and girls identified by the Inter-American Commission on Human Rights to understand the differentiated and intersectional approach that considers discriminatory factors that put Afro-descendant and Indigenous women at greater risk or in situations of heightened vulnerability.

The obligation of States to exercise due diligence in cases of sexual violence crimes

The [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#) requires States to prevent violence against women and girls and ensure that victims/survivors have access to resources. It states that: “States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women.”¹⁸

The ruling of the [Inter-American Court of Human Rights \(IACHR\)](#) in the case of [González et al. \(“Cotton Field”\) vs. Mexico](#) (2009) established that Article 7.b of the [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women \(Convention of Belem do Pará\)](#) requires that States apply **due diligence** to prevent, punish, and eradicate violence against women. In this regard, the ruling emphasized that:

States should adopt comprehensive measures to comply with due diligence in cases of violence against women. In particular, they should have **an appropriate legal framework for protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to the respective complaints** [emphasis added]. The prevention strategy should also be comprehensive; in other words, it should prevent the risk factors and, at

the same time, strengthen the institutions that can provide an effective response in cases of violence against women. Furthermore, the State should adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence. This should take into account that, in cases of violence against women, the States also have the general obligation established in the American Convention, an obligation reinforced since the Convention of Belém do Pará came into force (para. 258).¹⁹

Through their executive, legislative, and judicial representatives, States must guarantee a life free from gender-based violence and discrimination; prevent against and protect women, adolescents, and girls from all types of discrimination or violence; and investigate, punish, and redress structural violence against women.²⁰ States have the obligation to implement the standard of *enhanced due diligence* with a gender and childhood perspective, which involves adopting special measures and developing a process adapted to child and adolescent survivors of sexual violence to avoid their re-victimization during the investigation and prosecution stages.²¹ This standard must apply an [intersectional](#) approach, ensuring the protection of the rights of populations that have historically been discriminated against, including women, girls, adolescents, persons with disabilities,²² and Afro-descendant,²³ Indigenous,²⁴ rural, migrant, displaced, and refugee,²⁵ and LGBTQI+ populations.²⁶

18 CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 9, para 24, available at <https://digitallibrary.un.org/record/1305057?ln=en&v=pdf>.

19 Inter-American Court of Human Rights, Fact sheet in the case of González et al. v. Mexico, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf

20 CEDAW. Note N. 6, para. 24 b: “Under the obligation of due diligence, States parties must adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws.”

21 Inter-American Court of Human Rights, Case of Ángulo Losada v. Bolivia, Judgment of November 18, 2022. Preliminary objections, merits and reparations, p. 63, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_475_ing.pdf.

22 OAS/MESECVI, General Recommendation of the Committee of Experts of the MESECVI (No.4) Gender-based violence against girls and women with disabilities. Approved by the Committee of Experts of the MESECVI at its Nineteenth Meeting, on November 12, 2022, at <https://belemdopara.org/wp-content/uploads/2023/05/General-Recommendation-Violence-Disabilities.pdf>

23 OAS/MESECVI, Gender-based violence against Afro-descendant women. Approved at the XX Meeting of the Committee of Experts of the MESECVI, November 28-29, 2023 in Washington, D.C.; OEA/Ser.L/II.6.50 <https://belemdopara.org/wp-content/uploads/2024/07/General-Recommendation-Violence-Afrodescendant-Women.pdf>

24 See: CEDAW and General Recommendation 39 on the rights of Indigenous women and girls, at <https://lac.unwomen.org/sites/default/files/2022-05/CEDAW39-DerechosMujeresNiñasIndigenas-25May.pdf> (in Spanish).

25 OAS/CIM/MESECVI, Guidelines for developing a protocol for the protection of migrant, displaced, and refugee women against violence and sexual exploitation: An interagency, intersectional, and multidisciplinary tool for access to justice, at <https://belemdopara.org/wp-content/uploads/2024/05/Informe-Panama-Lineamientos-Protocolo.pdf> (in Spanish)

26 IACHR Court, Advisory Opinion OC-24/17 of November 24, 2017, requested by the Republic of Costa Rica. Gender identity, and equality and non-discrimination of same-sex couples, at https://corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf

The need to legislate to guarantee access to justice

According to the report [Failure to Protect: How Discriminatory Sexual Violence Laws and Practices are hurting Women, Girls, and Adolescents in the Americas](#) (Equality Now):

The rape and sexual violence laws [in] 43 jurisdictions from 35 countries [in the Americas and the Caribbean]... deny access to justice for many survivors of sexual violence as they provide a number of opportunities for perpetrators to escape justice. This impunity contributes to the continued perpetuation of sexual violence.²⁷

The report cites many challenges surrounding access to justice for victims of sexual violence, including the following:

- Discriminatory laws that need to be reformed to comply with international law standards, such as those that fail to criminalize marital or intimate partner rape; those with short statutes of limitations that limit the time frame for initiating legal proceedings in rape cases; those that allow the perpetrator to be released under certain circumstances (such as marriage to the victim); those that allow reconciliation or a pardon to be granted by the victim; or those that impose procedural restrictions limiting the ability of girls and adolescents to report sexual violence;
- The need for the implementation and interpretation of laws and protocols to be free from discriminatory stereotypes, and therefore institutional violence, and to incorporate gender and intersectionality perspectives across all stages of the criminal process;
- Rape myths and prejudicial stereotypes that influence the development and enforcement of sexual violence laws and act as a barrier to justice, as well as an obstacle to States' compliance with their international and regional obligations.²⁸



²⁷ Equality Now, Failure to Protect, 2021, available at <https://equalitynow.org/resource/failure-to-protect-how-discriminatory-sexual-violence-laws-and-practices-are-hurting-women-girls-and-adolescents-in-the-americas/>.

²⁸ OAS/CIM. Rapporteurship on the Rights of women, access to justice for women victims of violence in the Americas, OEA/Ser.L/V/II.Doc. 68, January 20, 2007, available at <http://www.cidh.oas.org/women/Access07/indiceacceso.htm>.

3. HOW CAN LAWS BE UPDATED AND IMPROVED?

Key considerations when proposing legal reforms on sexual violence

- a) Recognize that perpetrators of sexual violence are almost exclusively men, and a significant proportion of victims/survivors are women and girls. While the law should provide equal justice for all persons, it should also mainstream a gender and intersectionality perspective, enhanced due diligence that is victim-centered, maintain a focus on the suspect, and the ability to tailor to specific contexts.²⁹
- b) Start from the principle of non-discrimination and equal protection before the law. In addition, consider the need to eradicate myths and stereotypes about sexual violence and victims within the criminal justice system, taking into account that structural discrimination disproportionately affects women, adolescents, and girls in all their diversity, particularly if they belong to racialized groups or are persons with disabilities or migrants.
- c) Recognize that “women who are victims of sexual crimes, and girls or adolescents who are victims of sexual crimes, are very strongly disadvantaged in the criminal process, as a result of the trauma they have suffered,’ so it is necessary that there be an ‘empathic neutrality’ towards the victims of sexual violence by the officers of the justice system.”³⁰
- d) Include procedural rules to ensure that throughout the initial complaint, investigation, and trial stages, child and adolescent victims are treated with respect, sensitivity, and empathic neutrality. Their needs, including any disabilities they may have, should be

considered. Excessive public exposure, as well as exposure to their aggressor, should be prohibited to avoid further harm³¹ and ensure respect for their dignity and physical, mental, and moral integrity in accordance with the principles and rules of the [United Nations Convention on the Rights of the Child](#).

Consent as a central focus of regional and international standards on sexual violence

The IACHR, especially in the case of [Brisa de Angulo Losada vs. Bolivia \(2022\)](#), determined that “...criminal offenses related to sexual violence must focus on consent, an essential element in access to justice for women victims of sexual violence...it is not appropriate to demonstrate resistance to physical aggression, but rather the lack of consent.”³² In other words, “... if a rape is committed, proof of threat, use of force or physical violence should not be required, it being sufficient to demonstrate, by any suitable means of proof, that the victim did not consent to the sexual act.”³³ This requires careful consideration of the circumstances surrounding the case, as well as a focus on the alleged perpetrator’s actions.

Incorporating a gender analysis, the IACHR Court noted that “...reference cannot be made to the victims’ consent to have sexual relations when the aggressor holds a figure of authority³⁴ over the victim (*supra* paras. 147 and 148) because it creates a power inequality that is aggravated by the age difference between the victim and the perpetrator.”³⁵

Placing the burden of proof on victims to demonstrate resistance to prove that they did not consent is an obsolete approach, though many prosecutors, judges, and defense attorneys in the region continue to insist on using this

29 Gómez Tagle L. Erick and Estefany Juárez Ríos, *Criminología Sexual*, Rev. IUS vol.8 no.34, Puebla, Jul./Dec. 2014, indicate that sociological, criminological, and victimological studies have determined that the vast majority of perpetrators of sexual violence are men and that the majority of victims are women and girls, although it is acknowledged that the victim and perpetrator of these crimes can be of either sex. Available at http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-21472014000200009.

30 Inter-American Court of Human Rights, Case of Angulo Losada v. Bolivia, Judgment of November 18, 2022. Preliminary objections, merits and reparations, p. 63, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_475_ing.pdf.

31 Inter-American Court of Human Rights, Case of V.R.P., V.P.C. et al. v. Nicaragua, Judgment of March 8, 2018 (Preliminary Objections, Merits, Reparations and Costs), paras. 166, 167 and 168, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_350_ing.pdf

32 Inter-American Court of Human Rights, Case of Angulo Losada v. Bolivia, Judgment of November 18, 2022, Preliminary objections, merits and reparations, para.145, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_475_ing.pdf

33 *Ibid*, para. 145.

34 Unequal power or authority relationships can occur in educational, medical, psychological or psychosocial, religious, detention, residential care, child or orphanage centers, between guardian and ward, especially if the guardian takes advantage of the physical, psychological, mental or intellectual disability of the victim, or if the victim is in a situation of economic, legal, professional, disability, family, personal, or any other type of relationship that gives rise to a risk of sexual, economic, or other types of exploitation.

35 Inter-American Court of Human Rights, Case of Angulo Losada v. Bolivia, Judgment of November 18, 2022, Preliminary objections, merits and reparations, para.154, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_475_ing.pdf. See also, I/A Court H.R., Case of the Miguel Castro Castro Prison v. Peru, Judgment of November 25, 2006, Merits, reparations and costs, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf

approach. This is why it is urgent to reform legislation in accordance with the jurisprudence of the CEDAW Committee, which in the case of [Karen Tayag Vertido vs. the Philippines](#) (2008) established that “...there should be no assumption in law or practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.”³⁶ This case suggested that States should enact a definition that “...requires the existence of ‘unequivocal and voluntary agreement’ and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or [r]equires that the act take place in ‘coercive circumstances’ and includes a broad range of coercive circumstances.”³⁷

From the UN regional system, the former Special Rapporteur on violence against Women, its causes and consequences, Dubravka Šimonović, recommended that:

States should explicitly include a lack of consent at the center of their definition of rape. Force or threat of force provides clear evidence of non-consent, but force is not a constitutive element of rape. States must specify that consent must be given freely, as a result of the person’s free will, assessed in the context of the surrounding circumstances. Intercourse without consent should be

criminalized as rape in all definitions (85 a).³⁸

The [Platform of Independent Expert Mechanisms on Discrimination and Violence against Women](#) highlighted that the “...absence of consent must become the global standard for definition of rape” and called on States to review criminal codes and ensure that the definition of rape is based on the lack of consent.³⁹

According to International Criminal Law and the jurisprudence of the IACHR Court, conduct that should be punished as rape includes “...the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator.”⁴⁰ In this regard, the IACHR Court clarifies that “...for an act to be considered rape, it is sufficient that penetration occurs, however slight this may be, in the terms described above.”⁴¹

36 The Committee on the Elimination of Discrimination against Women, CEDAW, C/46/D/18/2008, Communication No. 18/2018, Karen Tayag Vertido v. Philippines, September 22, 2010, where it made recommendations to the State party, including: “...Ensure that all legal procedures in cases involving crimes of rape and other sexual offences are impartial and fair, and not affected by prejudices or stereotypical gender notions. To achieve this, a wide range of measures are needed, targeted at the legal system, to improve the judicial handling of rape cases, as well as training and education to change discriminatory attitudes towards women. Concrete measures include: ii) **Removal of any requirement in the legislation that sexual assault be committed by force or violence, and any requirement of proof of penetration, and minimization of secondary victimization of the complainant/survivor in proceedings by enacting a definition of sexual assault that either: a. Requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or b. Requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances.**” Available at <https://juris.ohchr.org/Search/Details/1700>

37 Inter-American Court of Human Rights, Case of Angulo Losada v. Bolivia, Judgment of November 18, 2022, Preliminary objections, merits and reparations, para.8.8, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_475_ing.pdf. Ibid. para. 8.8. See also: UN Women, Virtual Knowledge Centre to End Violence against Women and Girls, 2011, available at <https://www.endvawnow.org/en/>

38 United Nations, Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention, A/HRC/47/26, April 19, 2021 <https://docs.un.org/en/A/HRC/47/26> and Ibid. See also European Court of Human Rights, M.C. v. Bulgaria, paras. 163 and 166, Judgment of December 4, 2003, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-61521%22%5D%7D>

39 United Nations, UN News, “Lack of consent should be the global standard for defining the crime of rape,” November 25, 2019, available at <https://www.ohchr.org/en/press-releases/2019/11/international-day-elimination-violence-against-women25-november-2019>; See [General Recommendation No. 3 of the CEVI Committee of Experts](#) for further information on criteria to include in Criminal Codes based on criminal dogma and international jurisprudence to determine the absence of consent in a sexual act, such as: (a) the use of force or threat of force; (b) coercion or fear of violence or consequences; (c) intimidation; (d) detention and/or deprivation of liberty; (e) psychological oppression; (f) abuse of power; and (g) inability to understand sexual violence. OEA/Ser.L/II.7.10. MESECVI/CEVI/doc.267/21, pp. 15 and 16; European Court of Human Rights, M.C. v. Bulgaria, Application No. 39272/98, Dec. 4, 2003, para. 159 to 160, available at <https://archivos.juridicas.unam.mx/www/bjv/libros/11/5212/15.pdf>

40 ICTY, Prosecutor v. Anto Furundžija, Judgment of 10 December 1998, Case No. IT-95-17/1-T, para. 185; ICTY, Prosecutor v. Kunarac et al., Judgment of 22 February 2001, Case Nos. IT-96-23-T and IT-96-23/1-T, paras. 437 and 438; ICTY, Prosecutor v. Kunarac et al, Appeal Judgment of 12 June 2002, Case No. IT-96-23-T and IT-96-23/1-T, para. 127, and Case of J. v. Peru, supra, para. 359. For the purposes of criminalizing the crime against humanity and the war crime of rape, rape occurs when “[t]he perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.” Cf. International Criminal Court. Report of the Preparatory Commission for the International Criminal Court, U.N. Doc. PCNICC/2000/1/Add.2 (2000), Article 7(1)(g)-1. and Article 8(2)(e)(vi)-1, at <https://digitallibrary.un.org/record/427790?v=pdf>.

41 IACHR Court, Case of Espinoza Gonzales v. Peru, Judgment of November 20, 2014, at https://corteidh.or.cr/docs/casos/articulos/seriec_289_ing.pdf; IACHR Court, Case of the Penal Miguel Castro Castro Vs. Peru Judgment of November 25, 2006, at https://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf

4. KEY POINTS FOR ADAPTING LEGISLATION TO INTERNATIONAL STANDARDS

- Review the criminal and procedural codes, as well as specific laws to address gender-based violence against international standards on sexual violence to inform relevant substantive and procedural reforms.
- Explore the background materials and reports of the relevant parliamentary committees to understand and address any previous challenges in developing legal frameworks, consulting specialists, or civil society organizations with expertise on the subject.
- Ensure through legislation sufficient human, technical, and economic resources to ensure that all population groups, especially those who have been historically discriminated against, have proper access to justice that is free of discriminatory and racist stereotypes in accordance with the needs of these populations.
- Legislate and establish protocols to guarantee State coverage of medical, psychological, and psychiatric treatment and access to the required medication, understanding that forensic tests are impossible to obtain if they are not carried out shortly after the transgression.
- Review and reform the regulations followed by judicial officers as needed, considering the needs of all groups of the population in accordance with international law standards. Exercise the oversight function of parliaments to apply pressure on the justice system to approve protocols for action in cases of sexual violence.
- Promote training for judicial officers on addressing sexual violence from a consent-based approach to support the eradication of stereotypes and discriminatory myths about rape and other forms of sexual violence, such as the myth of false reporting, and emphasizing that discrepancies or imprecise dates or times in victim statements should never be used to undermine their validity.
- Incorporate a **victim-centered approach** within reforms: include standards on interacting with victims sensitively, listening, avoiding re-victimization, and focusing on their safety, rights, wellbeing, and expressed needs and choices, restoring control of their lives and bodies and ensuring the empathic, sensitive, and non-judgemental delivery of services and support.⁴² A gender and intersectionality perspective should be applied, and the case should be examined within the context in which the events took place, as well as the actions taken by the alleged perpetrator to ensure that the victim gave their consent. According to the [Report of the former Special Rapporteur on violence against women, its causes and consequences](#), Dubravka Šimonović, with a victim-centered approach:
 - ▶ The victim is placed at the center of all responses, ensuring that they are kept informed of their rights, the legal process, and progress on the case and that they receive support throughout the process, including free legal assistance where appropriate;
 - ▶ The number of victim interviews should be kept to a minimum and should be conducted only when strictly necessary for the purposes of the criminal investigation;
 - ▶ Examinations to collect medico-legal evidence should require the informed consent of the victim and should be performed only when strictly necessary for the purposes of criminal proceedings;
 - ▶ Victims should be allowed to be accompanied by their legal representative(s) and support persons of their choosing unless an alternative agreement has been reached.⁴³

⁴² UNHCR/UNHCR, The victim-centered approach, at <https://www.unhcr.org/what-we-do/how-we-work/tackling-sexual-exploitation-abuse-and-harassment/victim-centred-approach>

⁴³ United Nations, Board of Directors, Report of the Former Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention, A/HRC/47/26, dated April 19, 2021, available at: <https://docs.un.org/en/A/HRC/47/26>

- Within criminal codes, incorporate protection measures for cases of sexual violence, which seek to protect victims and mitigate the risk of new aggressions and threats, especially when children and adolescents are involved. Regarding protection measures, the [Committee on the Elimination of Discrimination against Women](#), in its [General Recommendation No. 35](#), established that legislatures have legal obligations to approve measures to protect survivors and witnesses of gender-based violence before, during, and after legal proceedings. Protection measures must be effective and swift and serve as a deterrent to the aggressor from harassing, intimidating, threatening, harming, or endangering the life and physical and psychological integrity of the victim. These measures should be imposed automatically when risk factors exist, with compliance monitored and effective action taken if the defendant fails to comply.
- Reform the organic laws related to the judiciary and any other regulations, as needed, to create a comprehensive and freely accessible system for compiling disaggregated data on sexual violence that considers gender, class, ethnicity/race, sexual orientation, gender identity, migration status, disability, and other factors that can serve as a basis for discrimination. Other data that should be collected include prosecution and conviction rates, reasons for case dismissal, and related abuses against women and girls (e.g., domestic violence). Such databases can support monitoring the justice system's functioning and indicate needed improvements, including integrating gender and intersectionality perspectives.
- Generate statistics on sexual violence to enable measurement of the long-term impact of public policy and evaluate the need for either improvements or continuity.
- In partnership with civil society, design and implement awareness campaigns⁴⁴ on sexual violence directed towards the general public, as well as specific groups, to challenge cultural myths and prejudices and—beyond providing theoretical or statistical information—offer the opportunity to reflect on, work with, and learn about concrete cases and real situations, as well as good practices.
- Reform legislation to make training for judicial and law enforcement personnel mandatory,⁴⁵ as well as the implementation of educational programs in schools on consent and responsible sexuality.⁴⁶
- Identify and review comparable legislation to share experiences on how comprehensively modifying laws facilitates access to justice.

44 Inter-American Court of Human Rights, Case of Ángulo Losada v. Bolivia, Judgment of November 18, 2022, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_475_ing.pdf.

45 For example, Law 27,499, known as the Micaela Law, establishes mandatory training on gender and gender-based violence for all persons working in the public service at all levels and hierarchies within the executive, legislative, and judicial branches of Argentina. The law is still in force, available at <https://www.pagina12.com.ar/787034-la-ley-micaela-sigue-vigente-aunque-no-todos-lo-sepan> (in Spanish)

46 Inter-American Court of Human Rights, Case of Ángulo Losada v. Bolivia, Judgment of November 18, 2022, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_475_ing.pdf.

5. WHAT ELEMENTS SHOULD THE LAW ON RAPE OR OTHER FORMS OF SEXUAL VIOLENCE INCLUDE?

Criminalization of rape

As part of reforming the legal system, rape should be criminalized in accordance with international standards. The definition of rape should encompass the following elements:

- Penetration of a sexual nature, however slight, of the vagina, anus, or mouth with a body part, object, or animal;
- A basis on consent being required for all sexual acts, recognizing that consent can be modified or withdrawn at any time;
- No exceptions for its criminality based on the status or identity of the victim, such as a spouse or family member;
- Penalties must be effective, proportionate, act as a deterrent, and reflect the severity of the offense;
- No mitigating factors or other means of pardoning crimes should be permitted, such as plea bargains or extenuating circumstances;
- Comprehensive indemnification/reparations.

Definitions of rape based on the use of violence or threat of violence, rather than focusing on lack of consent, do not comply with international human rights standards and may limit proper investigation. This can lead to impunity and limit the ability to obtain adequate and sufficient evidence. When such definitions are based on the use of force, they allow certain contexts of rape to go unpunished and contribute to rape myths and the perception that it is the responsibility of victims to protect themselves, which significantly limits the prosecution of rape crimes. Such definitions generally ignore the realities faced by many women and girls who have experienced rape or sexual abuse, enabling widespread impunity for perpetrators.⁴⁷

Example for classifying the crime of rape

1. A person (“the perpetrator”) commits rape when:
 - a. They fully or partially penetrate with a body part, object, or animal, the vagina or anus of the other person (“the victim”) or penetrate the oral cavity of the victim with a sexual organ or enable a third person to do so;
 - b. They lack the free and voluntary consent of the victim. Penetration may be slight⁴⁸ and can occur through clothing.
2. The preceding provision also applies, but not exclusively, to:
 - a. Acts committed against former or current spouses or partners;
 - b. Acts committed against children and adolescents in the family environment;
 - c. Acts committed in the context of conflict, war crimes, general or systemic attacks, or national unrest;
 - d. All persons, regardless of the sex, gender, or sexual orientation of the victim or perpetrator.

The alleged offender must demonstrate genuine efforts to ensure that the victim freely and voluntarily consented to the entire sexual act.

⁴⁷ Equality Now, Failure to Protect, 2021, available at <https://equalitynow.org/resource/failure-to-protect-how-discriminatory-sexual-violence-laws-and-practices-are-hurting-women-girls-and-adolescents-in-the-americas/>.

⁴⁸ Istanbul Convention, Article 36.1.

5.1 What are the elements of consent?

Consent is determined by the victim's ability to express their willingness to participate in the act, based on their free will, and can be modified or rescinded at any time during the sexual interaction, encompassing any and all sexual acts. For example, a woman may consent to vaginal penetration but not to oral penetration or penetration without a condom, or she may consent to bodily contact but not to penetration.⁴⁹

Therefore, to fully consent to the sexual act, the victim must:

- Have the **capacity** to consent, i.e., be old enough and have the capacity to understand whether or not they wish to engage in sexual activity;
- Have the **freedom** to consent, i.e., be in a position to make that decision freely, without any type of coercion, including economic exploitation and social pressure;
- Have the **will** to consent, i.e., have voluntarily and unequivocally accepted to engage in the act by their own choice.

5.2 Circumstances in which it is not possible to give consent

The evidentiary standards of international criminal law found in the statutes of the International Criminal Court and its [Rules of Procedure and Evidence, adopted by the IACHR Court](#), set out the conditions where it should not be inferred that the victim gave their consent. Rule 70⁵⁰ should be explicitly incorporated into legal reforms or mentioned in the articles to prevent prosecutors and judges from making discriminatory interpretations against victims. The [MESECVI](#) Committee of Experts (CEVI/MESECVI) addressed this in General Recommendation No. 3, where it established that “[c]onsent may not be inferred when there is a power relationship that forces the victim to act out of fear of the consequences thereof, taking advantage of an environment of coercion.”⁵¹



49 Equality Now, Failure to Protect, 2021; paragraph 149 of the judgment of Brisa de Ángulo v. Bolivia; and OAS, Eighteenth Meeting of the Committee of Experts, General Recommendation of the Committee of Experts of the Mesecevi (No. 3): The concept of consent in cases of gender-based sexual violence against women, OEA/Ser.L/II/7.10, MESECVI/CEVI/doc.267/21, November 27, 2021, available at https://www.oas.org/en/mesecevi/docs/MESECVI_CEVI_doc.267_21.ENG.RecomendacionGeneralConsentimientoSexual.XVIII%20CEVI.pdf

50 United Nations, Rule 70, Principles of evidence in cases of sexual violence, The International Criminal Court, Rules of procedure and evidence, U.N. Doc. PCNICC/2000/1/Add.1(2000), <https://www.icc-cpi.int/sites/default/files/2024-09/RulesProcedureEvidenceEng-2024.pdf>

51 Committee of Experts of the [MESECVI](#) in General Recommendation No. 3 on The concept of consent in cases of gender-based sexual violence against women, available at https://www.oas.org/en/mesecevi/docs/MESECVI_CEVI_doc.267_21.ENG.RecomendacionGeneralConsentimientoSexual.XVIII%20CEVI.pdf

5.3 Example of a definition based on consent⁵²

1. Free and voluntary consent means knowingly and voluntarily agreeing to engage in sexual relations or acts with another person.
2. Consent must be given freely, as a result of the individual's free will, and understood in the context of the surrounding circumstances.
3. For the purposes of this section, free and voluntary consent:
 - a. Must be affirmatively perceived by all parties and can be expressed through words, actions, conduct, or otherwise;
 - b. Cannot be inferred from the victim's silence;
 - c. Cannot be inferred from non-resistance, verbal or physical, by the victim;
 - d. Cannot be solely inferred from the suggestion, request, or communication by the victim regarding the use of a condom or birth control;
 - e. Cannot be inferred from the victim's past sexual behavior;
 - f. Cannot be inferred from the victim's past or present relationship, sexual or otherwise, with the alleged perpetrator;
 - g. Must encompass the entirety of the sexual act(s) engaged in;
 - h. May be rescinded or modified at any time;
 - i. Must be assessed in the context of the surrounding circumstances.
4. Circumstances in which a victim is unable to voluntarily and freely consent include but are not limited to when:
 - a. The victim is a person under the age of consent in accordance with the law of the respective country;
 - b. The victim is unconscious, asleep, or intoxicated due to having consumed drugs or alcohol voluntarily, involuntarily, or unknowingly;
 - c. The victim is ill, suffering from an injury, or is otherwise especially vulnerable;
 - d. The victim does not have the capacity to give consent due to a physical or intellectual impairment or disability;
 - e. The perpetrator is an adult, and the victim is a minor related to the perpetrator by blood, marriage, adoption, foster care, or other similar family affiliation; or

- f. The participation is a consequence of the perpetrator taking advantage of a position of power, trust, influence, or dependency.

5.4 Circumstances for evaluating consent

Consent must be assessed within the context of the surrounding circumstances, taking into account a wide range of factors, including whether consent was reasonably considered by the alleged perpetrator—that is, whether the alleged perpetrator took the necessary steps to determine whether or not the complainant/survivor was giving consent. There must be “unequivocal and voluntary agreement” and evidence of the steps the perpetrator took to secure the victim's consent. Special attention should be paid to any dynamics of unequal power or authority, as well as the exploitation of positions of vulnerability, trust, influence, and dependence.⁵³ This is relevant because sexual violence commonly occurs in the context of intimate partner, family, or acquaintance relationships. It is critical for the law to explicitly criminalize rape in the domestic setting, either as a specific crime or as an aggravating circumstance with an increased penalty in the event of a conviction.

In contexts where there are coercive circumstances or where positions of dependency or vulnerability are exploited, there are patterns and acts of aggression, threats, humiliation, intimidation, and other forms of abuse that are used to harm, punish, coerce, or frighten the victim. Controlling behavior comprises “...a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance, and escape and regulating their everyday behaviour.”⁵⁴ This is particularly serious when involving victims with disabilities who are dependent on a guardian who abuses or violates them.

⁵² Istanbul Convention, Article 36.2

⁵³ Inter-American Court of Human Rights, Case of *Ángulo Losada v. Bolivia*, Judgment of November 18, 2022, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_475_ing.pdf

⁵⁴ UK Government Home Office, Controlling or coercive behaviour: statutory guidance framework, last updated July 27, 2023, available at <https://www.gov.uk/government/publications/controlling-or-coercive-behaviour-statutory-guidance-framework/controlling-or-coercive-behaviour-statutory-guidance-framework-accessible>

5.5 Coercive circumstances⁵⁵

In a legal reform, the following coercive circumstances could guide both prosecutors and judges in ensuring a consent-based approach:

1. When there are coercive circumstances, consent cannot be freely and voluntarily given and is invalidated.
 - a. Coercive circumstances encompass a wide range of situations, including but not limited to circumstances where:⁵⁶
 - [i] The victim was subjected to abuse, violence, duress, deception, detention, psychological oppression, intimidation, or pressure that contributed to the victim's submission or compliance; or
 - [ii] The victim was subject to a threat (expressed or implied) of present or future physical or non-physical harm to the victim or a third person.
 - b. When the aggressor is in a position or relationship of power or authority over the victim, it is presumed that consent is not voluntary, genuine, or desired.⁵⁷
 - [iii] In a school, hospital, religious, correctional, or care facility;
 - [iv] In a professional or occupational environment;
 - [v] In a residential care facility, community home, foster home, children's home, or orphanage;
 - [vi] In the context of providing medical, psychological, or psychosocial support or treatment to the victim;
 - [vii] In a teacher-pupil relationship;
 - [viii] When the victim is a minor, in the context of a significant age difference between the aggressor and the victim;
 - [ix] Exploiting the physical, mental, or intellectual impairment or disability of the victim;
- [x] Acting as a social worker, probation officer, coach, trainer, instructor, member of the clergy, caregiver, babysitter, or in any other caring capacity in relation to the victim;
- [xi] By being generally involved with and responsible for the care, training, or supervision of the victim; or
- [xii] As a consequence of the victim being in a situation of dependence (including economic, legal, professional, domestic, and/or personal) on the aggressor or any other type of relationship that gives rise to a risk of exploitation.

55 *M.C. v. Bulgaria*, App. no. 39272/98, (ECHR, 4 December 2003), para. 181; ICC Rules of Procedure and Evidence, Rule 70; ICC Elements of the Offences, Articles 7 (1) (g-1) (2), 8(2) (e) (vi) (-1); Katanga ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008, para 440, disponible en https://www.icc-cpi.int/CourtRecords/CR2008_05172.PDF; The Administration of Justice on Sexual Violence Crimes, p. 13, available at <https://rm.coe.int/-web/1680a0a3e3>; Bemba ICC-01/05-01/08-3343, 21 March 2016, para. 105-106: 'The Chamber notes that the victim's lack of consent is not a legal element of the crime of rape under the Statute. The preparatory works of the Statute demonstrate that the drafters chose not to require that the Prosecution prove the non-consent of the victim beyond reasonable doubt, on the basis that such a requirement would, in most cases, undermine efforts to bring perpetrators to justice. Therefore, where "force", "threat of force or coercion", or "taking advantage of a coercive environment" is proven, the Chamber considers that the Prosecution does not need to prove the victim's lack of consent; Kunarac Appeal Judgment, IT-96-23&IT-96-23/1-A, 12 June 2002, para. 126, disponible en <https://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf>; NB: Nine European common and civil law countries have enacted consent-based rape legislation: Amnesty International, available at <https://www.amnesty.org/en/latest/news/2019/11/only-nine-europe-an-countries-recognise-sex-without-consent-is-rape-this-must-change/>; See also: Canada Criminal Code, Articles 271, 273.

56 The Hague Principles, Master Document, p. 45; ICC Elements of Crimes, Articles 7(1)(g)-6, 8(2)(b)(xxii)-6, and 8(2)(e)(vi)-6; Ntaganda, ICC-01/04-02/06, *Trial Judgment*, 8 July 2019, para 944; Kunarac et al. IT-96-23& IT-96-23/1-A, *Appeal Judgment*, 12 June 2002, para 130.

57 Report of Dubravka Šimonović, UN Report of the Special Rapporteur on violence against women, its causes and consequences, A framework for legislation on rape (model rape law), June 15, 2021, A/HRC/47/26/Add.1, para 21.

5.6 Age of consent and protecting non-coercive relationships between peers

States must establish **laws that recognize the vulnerability of children and adolescents to sexual violence** and punish those who use their positions of power and control to violate, abuse, and exploit their dependence or vulnerability. Consequently, legislation should recognize them as legal subjects, in accordance with their evolving capacity, age, and maturity, and not penalize young people of similar ages for sexual activities that are freely consented to, non-coercive, and non-exploitative. In other words, legislation should protect adolescents from abuse and the consequences of not being fully aware of their rights and development. In order to ensure that adolescents who have sexual relations with each other are not punished, it is necessary for laws to consider:

- a. If there was free and voluntary consent;
- b. If there is a small age difference;
- c. If there were no circumstances that would negate consent, such as:
 - ▶ a relationship of authority, dependency, or exploitation;
 - ▶ physical violence, coercion, or exploitation of vulnerability;
 - ▶ vulnerability or coercive circumstances.

Example of the age proximity defense:⁵⁸ victim aged 12 to 14 years old

If the alleged offender is accused of rape or sexual abuse of a victim who is twelve years of age or older but under fourteen years of age, it may be a defense that the victim freely and voluntarily consented to the sexual activity if the alleged offender:

- a. Is up to two years older than the victim; and
- b. Is not in a position of trust or authority over the victim, is not a person with whom the victim is in a dependent or exploitative relationship, and there is no other way to coerce or exploit the victim's vulnerability.

Example of the age proximity defense: victim aged 14 to 16 years old

If the alleged offender is accused of rape or sexual abuse of a victim who is fourteen years of age or older but under sixteen years of age, it may be a defense that the victim freely and voluntarily consented to the sexual activity if the alleged offender:

- a. Is up to four years older than the victim; and
- b. Is not in a position of trust or authority over the victim, is not a person with whom the victim is in a dependent or exploitative relationship, and there is no other way to coerce or exploit the victim's vulnerability.

5.7 Prohibition of extenuating circumstances

When legislating on crimes of sexual violence, **reducing the severity of the crime or other means of pardoning the crime**, such as through plea bargains or extenuating circumstances, **should be prohibited**. Guilty pleas should only be accepted if they do not effectively allow impunity. Perpetrators are and should be held criminally responsible by virtue of their unlawful behavior. States should prohibit the use of extenuating or mitigating circumstances in cases of sexual violence related to:

1. The motive for the crime, including but not limited to, jealousy, revenge, anger, retribution, punishment, preservation of honour, custom, religion, cultural or political beliefs, and so-called "public morality."
2. Alcohol consumption or drug use by the offender.
3. The character or reputation of the perpetrator or victim.
4. The perpetrator avoiding punishment because of their family or community ties, by compensating for harms, or by reconciling with the affected person or marrying them.
5. The relationship between the perpetrator and the victim.
6. Any other circumstance or reason that harms the victim(s).

⁵⁸ Cases of experimentation, in general, among children close in age and development, should not be considered criminal offenses in the absence of coercion, exploitation, or breach of trust. See: Crown Prosecution Service Guidelines, CPS Legal guidance on rape and sexual offences, Chapter 12: Sexual offences and youths.

6. REPEALING OR REFORMING OTHER LAWS

6.1 Eliminate the crime of *estupro*/statutory rape provided that a comprehensive law based on consent exists with protections for adolescents

Estupro is an obsolete 17th-century concept that can contain reference to notions of chastity and morality and is used to evade punishment for the crime of rape. Classifying rape against an adolescent girl as *estupro* denies justice to teenage rape victims. These laws are discriminatory and perpetuate the myth that teenage girls are seductive or manipulative and take advantage of adult men. They also permit less severe penalties for men—usually adult men—who rape teenage girls over the age of consent but under a certain age (usually between 14 and 18). *Estupro* provisions also ignore the unequal power dynamics between adolescent girls and adults.⁵⁹

While existing provisions for *estupro* remain in effect, law enforcement and judicial officials should assess acts of sexual violence against adolescent girls against the threshold definition of rape and accordingly prosecute such acts as rape and not *estupro*.

It is important to repeal the crime of *estupro* or similar norms, considering the understanding of rape from a consent-based approach, to ensure that adolescent girls are protected from sexual violence in all circumstances. In other words, by having legislation and interpretations based on a lack of consent, the crime of statutory rape can be eliminated because the crime of rape covers all coercive circumstances, including deception and seduction. It is also critical to repeal any rule that provides for the possibility of marriage to “restore the honor” of the child who has been raped as a way of minimizing the seriousness of the crime committed.

6.2 Repeal laws that allow claims of parental alienation syndrome

It is important to prohibit any legislation based on the false parental alienation syndrome or to revoke the existing ones. Parental alienation syndrome is a pseudo-scientific construct put forward in 1985 by American psychiatrist Richard Gardner,⁶⁰ whose argument was based on the belief that most of the reports of child sexual abuse made by mothers are false. This concept ignores the reality of power inequality and domestic violence suffered by children and adolescents, as well as women, feeding into the idea that women manipulate the accounts of children and adolescents, leading to unfair accusations and invalidating reports of father-child sexual abuse.⁶¹

CEVI/MESECVI has underscored the obligation of States to “...take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations, or to modify legal or customary practices which sustain the persistence and tolerance of violence against women”, particularly in the context of using the unscientific pseudo-concept of parental alienation against women.⁶² In addition, the MESECVI has urged States to prohibit the use of the false parental alienation syndrome in legal proceedings in order to avoid putting children and mothers in situations of greater vulnerability since this concept could be used as a continuum of gender-based violence and create State responsibility for institutional violence. Furthermore, the Special Rapporteur on Violence against Women and Girls, in a report to the Human Rights Council, A/HRC/53/36, [Custody, violence against women and violence against children](#), condemned the use of the pseudo-concept by justice systems and denounced the alarming tendency of family courts to disregard a history of domestic violence and abuse in custody cases, particularly when mothers and/or children make credible allegations of such abuse, including coercive control and physical or sexual violence. The report further stressed that such practices are unacceptable and that States must take urgent measures to prevent suffering and

59 Equality Now, Failure to Protect, 2021, available at <https://equalitynow.org/resource/failure-to-protect-how-discriminatory-sexual-violence-laws-and-practices-are-hurting-women-girls-and-adolescents-in-the-americas/>.

60 Richard A. Gardner, *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals*. Creative Therapeutics, Cresskill, New Jersey, 1992.

61 Juan Carlos Volnovich explains that parental alienation syndrome does not have a medical, psychiatric, or psychological scientific basis, as it is not recognized by the DSM-IV, ICD-10, the World Health Organization, professional associations of medicine, psychiatry or psychology, or in recognized academic and university environments to conclude that its use represents an exercise of malpractice, which has serious consequences for the psychological development of the affected children and constitutes a serious violation of their human rights. Defensora de los Derechos de los NNA [Defender of the Rights of Children and Adolescents], Recommendation 2: General Recommendations in response to reports of sexual abuse against children and adolescents or forced reunification, July 2020.

62 Joint Declaration of the Committee of Experts of the Follow-up Mechanism of the Belém do Pará Convention and the Special Rapporteur published on August 12, 2022, at <https://www.oas.org/es/mesecevi/docs/Comunique%20Parental%20Alienation.pdf>

violence against children and women.⁶³

The failure to update regulations in accordance with international human rights standards can have a direct impact on the justice system, creating barriers to access for children and adolescents who are victims of sexual violence. These barriers include the dismissal of accounts of rape or sexual abuse as false and the allegation of lack of clarity and evidence incriminating aggressors. These obstacles to accessing justice put victims of sexual violence at risk, violating their rights. They can also lead to forced reunification that violates the dignity, integrity, and psychophysical health of minors and act as a deterrent to criminal complaints against sexual abusers. In other words, when mothers file complaints of child sexual abuse in the criminal jurisdiction, aggressors can access family courts to request that their children be reunited with them as a strategy to refute the criminal complaint and go unpunished. It is, therefore, important that any accusation of rape or sexual abuse is thoroughly investigated and that the use of the false parental alienation syndrome⁶⁴ is prohibited.

6.3 Reform statutes of limitations on sexual violence

Stigma, shame, intimidation, trauma, and even a lack of understanding of sexual violence as a concept can prevent victims from filing a complaint. Short statutes of limitations impose an overwhelming burden on victims and allow perpetrators to evade accountability. This is especially true with victims who are children or adolescents; they do not always disclose the abuse they have suffered until years later, as they may need time to understand the illegal nature of the transgression or may find it difficult to file a complaint before they reach the age of majority, particularly when the perpetrator is a member of their family or community.⁶⁵

Although it is more difficult to prosecute when time has passed because evidence may be limited to the victim's testimony, **the law should never hinder access to criminal justice proceedings**, particularly for those who were victims of sexual abuse as children and who may not be able to come forward until well after maturity. As such, it is recommended that **laws imposing a statute of limitations for filing rape complaints be repealed**, thus opening access to justice for all victims/survivors.

63 Board of Directors, Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, Custody, violence against women and violence against children, A/HRC/53/36, 53rd session, 19 June-14 July 2023, available at <https://docs.un.org/en/A/HRC/53/36>

64 Correa Solarte, Alexandra and Gladys Solarte Mancipe, El pseudo-concepto de la "Alienación Parental" y su impacto en el mundo de las mujeres y los niños [The pseudo-concept of "parental alienation" and its impact on the world of women and children], TraHs N. HS N. 13, September 26, 2024, available at <https://www.unilim.fr/trahs/6149&file=1/>. (in Spanish)

65 Equality Now, Failure to Protect, 2021, available at <https://equalitynow.org/resource/failure-to-protect-how-discriminatory-sexual-violence-laws-and-practices-are-hurting-women-girls-and-adolescents-in-the-americas/>.

7. TESTS

States should ensure that only truly relevant evidence is collected and used during the investigation, prosecution, and trial of sexual violence crimes. States should not impose onerous evidence and corroboration requirements to prove the crime or the invasive and inappropriate collection of such evidence; they should consider the context and all the circumstances surrounding the case and not draw negative assumptions based on the identity of the complainant, including information about past sexual behavior. In addition, it is essential that the evidence is examined in a way that is free of stereotypes and myths about rape, sexual assault, or other types of prejudice or bias.

The myth of false accusations leads many members of the justice system to dismiss allegations on the grounds of a lack of precision in the information provided by the victims in their official statements to police, health professionals, or judicial authorities. Given the traumatic nature of sexual violence crimes, victims' statements may contain inconsistencies. However, these variations should not detract from their evidentiary value, as confirmed by case law.⁶⁶

8. PENALTIES

Penalties should be effective, proportionate, dissuasive, and commensurate with the true severity of the crime. They should also be heightened for aggravating circumstances, such as spousal rape and rape committed with a discriminatory motive, for example, on the basis of gender identity or sexual orientation.

Fines, conditional sentences, and/or community service by themselves are not adequate punitive measures, as they ignore the seriousness of the impact on victims. Similarly, although the circumstances of the offense or crime may warrant stricter penalties, the act itself should not be described in a way that establishes a hierarchy, for example, rape of a former or current partner or rape based on the removal of a condom after consent has been given to have sex with a condom.

The death penalty, chemical castration, or any other punishment involving inhumane, cruel, or degrading treatment should never be imposed on sex offenders as it violates human rights and contradicts the provisions of the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#).

⁶⁶ Inter-American Court of Human Rights. Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations, and costs. Judgment of August 30, 2010. Series C No. 215, paras 100-116, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf. Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations, and costs. Judgment of August 31, 2010. Series C No. 216, paras 89-106, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf.

9. INDEMNIFICATION AND REPARATIONS

The right to redress is contained in the [CEDAW](#) and has been developed in [General Recommendation 31 of the CEDAW Committee](#), as well as in the [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women \(Convention of Belém do Pará\)](#).

There are conventional and constitutional obligations to fully repair the material and immaterial damage to victims of sexual violence. Reparation should include restitution, compensation, and rehabilitation measures provided by the State. Legal, social, and health services should be provided free of charge, including sexual, reproductive, and mental health services for a full recovery, as well as satisfaction and non-repetition measures.

[MESECVI](#) establishes that comprehensive reparation is a State obligation and a right of victims of human rights violations, which is intended to address both the physical and psychological harm endured. Reparation measures can encompass individual and collective dimensions, including material and symbolic measures.⁶⁷

The concept of comprehensive reparation is not limited to economic compensation; it encompasses a series of broader measures to repair damages, including:

- a. **Restitution** to return the victim to the situation they were in before enduring the violation of their rights;
- b. **Compensation** or economic compensation, both for material and non-material damages suffered by the victim;
- c. **Rehabilitation** or adequate attention to the physical and psychological harms to the victim;
- d. **Satisfaction** or the verification of the facts, public knowledge of the truth and acts of redress, the punishment of the perpetrator, and paying tribute to the victim(s);
- e. **Guarantees of non-repetition**, which seeks to reduce collective damages. For example, reforming the crime of rape with consent as the central focus could improve the implementation of the law by making the process victim-centered, generating a sense of trust in the justice system in society, and ensuring that the circumstances that give rise to human rights violations are not repeated.⁶⁸

⁶⁷ UN Women, Regional Office for Latin America and the Caribbean and the Follow-up Mechanism for the Convention of Belém do Pará (MESECVI) of the Inter-American Commission of Women, available at: <https://www.oas.org/es/mesecvi/docs/Informe-Reparacion-Integral.pdf>. (in Spanish)

⁶⁸ Plurinational Constitutional Tribunal of Bolivia, Plurinational Constitutional Judgment, [SCP 0019/2018-S2](#) of February 28, available at: <https://juris-prudencia.tcpbolivia.bo/Fichas/ObtieneResolucion?idFicha=48909>. (in Spanish).

10. CONCLUSION

International human rights standards require that the criminal **classification of rape and other forms of sexual violence** incorporate **consent as its central focus**.

Outdated or discriminatory legal definitions of sexual violence—such as those based on the use of force—perpetuate myths and gender stereotypes, fail to protect victims, impose limiting requirements for corroboration, can deter survivors from reporting, and create a lack of clarity and credibility in judicial proceedings. In other words, national legislation on sexual violence that does not comply with international standards creates obstacles for victims/survivors in accessing justice and reduces the possibility of prosecuting perpetrators.

Parliaments have the responsibility to promote a national legal system that addresses sexual violence in accordance with international human rights standards from a **perspective of free and voluntary consent**. Parliamentarians have the opportunity to close the legal gaps and comply with due diligence to prevent, address, punish, and eradicate sexual violence, ensuring impartial justice.

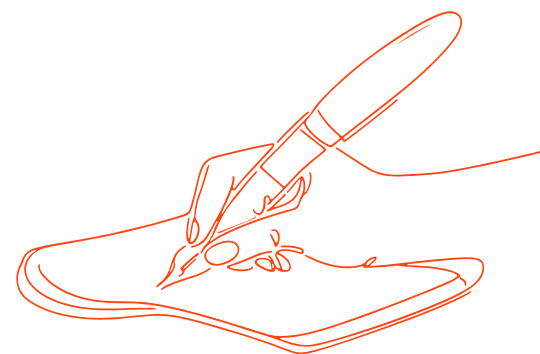
This guide not only dispels the discriminatory myths and stereotypes that underpin current legislation on sexual violence in Latin America and the Caribbean but also provides the necessary guidelines for parliamentarians to update and adapt their laws to international standards, drawing on a wide range of international norms and case law that explain and support a consent-based approach.

The **key elements for legislation on sexual violence** are presented in the various sections in this guide: the criminalization of rape according to international human rights standards (including concrete examples); the key defining components of consent (capacity, willingness, and freedom to consent); the importance of defining and describing surrounding, coercive circumstances, and all situations in which it is not possible to give consent; as well as the prohibition of extenuating circumstances.

At the same time, the guide adds recommendations to promote **regulatory harmonization**. It explains the importance of eliminating the crime of *estupro* and any law that permits claims of parental alienation syndrome. It also shares international standards on gathering **evidence** during the investigation, prosecution, and trial of crimes of sexual violence; effective, proportionate, and dissuasive **criminalization** commensurate with the severity of the crime; and **indemnification and reparations**.

Legislating on crimes of sexual violence from a consent-based approach means promoting **access to justice for women victims/survivors**, repealing discriminatory laws that criminalize and/or deter victims from reporting, and promoting fairer processes.

By updating legislation, parliamentarians can contribute to consolidating a **legal framework on sexual violence** that has been developed with consideration of gender, intersectionality, interculturality, and human rights **in accordance with the international standards that States have committed to upholding**.



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